

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Kenneth McMaster
(08B1832), Plaintiff(s)

vs.

L.W. LABARGE, Correction Officer,
Individual and Official Capacity; et al.
Defendant(s)
(See attached sheet)

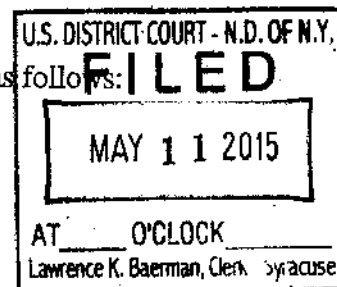
INMATE
CIVIL RIGHTS
COMPLAINT PURSUANT
42 U.S.C. § 1983

Case No. 9: 15 CV 578

Plaintiff(s) demand(s) a trial by: ☒ JURY ☐ COURT (Select only one.)

Plaintiff(s) in the above-captioned action, allege(s) as follows:

JURISDICTION



1. This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 1343(3) and (4), and 2201.

PARTIES

2. Plaintiff: Kenneth McMaster (on 08B1832)

Address: Upstate Correctional Facility, P.O. Box 2001, Malone, NY 12953.

Additional Plaintiffs may be added on a separate sheet of paper.

3. a. Defendant: L.W. LABARGE

Official Position: Correction Officer

Address: Upstate C.F.
309 BARE HILL ROAD, PO BOX 2001
Malone, N.Y. 12953

Continuation of Page #1 caption

S.D. Hamare, Correction Officer, Individual and Official Capacity;

E. Smith, Correction Officer, Individual and Official Capacity;

K. Ellsworth, Correction Officer, Individual and Official Capacity;

E. Lambombard, Correction Officer, Individual and Official Capacity;

E. White, Nurse For Corrections, Individual and Official Capacity;

M. Travers, Nurse For Corrections, Individual and Official Capacity;

B. L. Brue, Nurse For Corrections, Individual and Official Capacity;

G. M. Wilson, Nurse For Corrections, Individual and Official Capacity;

B. L. Holcombe, Nurse For Corrections, Individual and Official Capacity;

D. Reome, Nurse For Corrections, Individual and Official Capacity;

C. Fairchild, Nurse, For Corrections, Individual and Official Capacity;

L. Marlow, Nurse For Corrections, Individual and Official Capacity;

Continued From Continuation of Page #1 Caption

M.K KOWALEWICK, Physician Assistant For Corrections,
Individual and Official Capacity;

N. Smith, Nurse Administrator For Corrections, Individual and
Official Capacity;

J.G. Tetro, Lieutenant For Corrections, Individual and Official
Capacity;

K.W. Roger, Lieutenant For Corrections, Individual and Official
Capacity;

M.C. Tompkins, Sergeant For Corrections, Individual and Official
Capacity;

C.S. ROWE, Sergeant For Corrections, Individual and Official Capacity;

J.J. Donah, Sergeant For Corrections, Individual and Official Capacity;

S.W. Woodward, Inmate grievance supervisor, Individual and Official
Capacity;

B.L. Collyer, Grievance Supervisor, Individual and Official Capacity;

J. Uhlerich, OMH Social worker, Individual and Official Capacity;

b. Defendant: S.D. LAMARE
Official Position: Correction Officer
Address: LIPSTATE C.F.
309 BARE HILL ROAD, P.O. BOX 2001
Malone, N.Y. 12953

c. Defendant: E. SMITH
Official Position: Correction Officer
Address: LIPSTATE C.F.
309 BARE HILL ROAD, P.O. BOX 2001
Malone, N.Y. 12953

(SEE ATTACHED SHEET)

Additional Defendants may be added on a separate sheet of paper.

4. PLACE OF CONFINEMENT

a. Is there a prisoner grievance procedure at this facility?

☒ Yes

☐ No

b. If your answer to 4a is YES, did you present the facts relating to your complaint in this grievance program?

☐ Yes

☒ No

If your answer to 4b is YES,

(i) What steps did you take? _____

(ii) What was the final result of your grievance? _____

Continuation of Page #2 Parties.

K. Ellsworth, Correction Officer, (C.O.)

E. Lombard, Correction Officer, (C.O.)

E. White, Nurse For Corrections, (RN)

M. Travers, Nurse For Corrections, (RN)

B.L. BLUE, Nurse For Corrections, (RN)

G.M. Wilson, Nurse For Corrections, (RN) 2

B.L. Holcombe, Nurse For Corrections, (RN)

D. Deome, Nurse For Corrections, (RN)

C. Fairchild, Nurse For Corrections, (RN)

L. Madon, Nurse For Corrections, (RN)

M.K. Kowalchuk, Physician Assistant For Corrections (P.A.)

N. Smith, Nurse Administrator For Corrections (N.A.)

J.G. Tatro, Lieutenant For Corrections, (LT.)

K.W. ROGER, Lieutenant, For Corrections, (LT.)

M.C. Tompkins, Sergeant For Corrections, (SGT)

C.S. Rowe, Sergeant For Corrections, (SGT).

J.J. Donah, Sergeant For Corrections, (SGT)

S.W. Woodward, Grievance Supervisor For Corrections (IGPS)

B.L. Collier, Grievance Supervisor For Corrections (IGPS)

J. Uhlrich, OMH Social Worker For Corrections (OMH.S.W.)

Address to All Parties: Upstate C.F.

309 Bark Hill Road P.O. Box 2001

Malone, N.Y. 12953

If your answer to 4b is NO – why did you choose to not present the facts relating to your complaint in the prison's grievance program? ~~Because~~

I filed my grievance(s) and exhausted it @
Upstate C.F. where incident took place

- c. If there is no grievance procedure in your institution, did you complain to prison authorities about the facts alleged in your complaint?

 Yes

 No

If your answer to 4c is YES,

- (i) What steps did you take? _____

- (ii) What was the final result of your grievance? _____

If your answer to 4c is NO – why did you choose to not complain about the facts relating to your complaint in such prison? _____

5. PREVIOUS LAWSUITS

- a. Have you filed any other lawsuits in any state and federal court relating to your imprisonment?

✓ Yes

 No

- b. If your answer to 5a is YES you must describe any and all lawsuits, currently pending or closed, in the space provided below.

For EACH lawsuit, provide the following information:

- i. Parties to previous lawsuit:

Plaintiff(s): Mr. Kenneth A. DeDester

Defendant(s): J. Saunders, E. RAIMO, And J. Harrington.

ii. Court (if federal court, name District, if state court, name County):

Northern District Federal Court

iii. Docket number: 14-cv-1574

iv. Name of Judge to whom case was assigned: Thomas J. McAvoy

v. Disposition (dismissed? on appeal? Currently pending?): Pending

vi. Approximate date of filing of prior lawsuit: December 29th 2014

vii. Approximate date of disposition: Don't know

6.

FACTS

Set forth the facts of your case which substantiate your claim of violation of your civil and/or Constitutional rights. List the events in the order they happened, naming defendants involved, dates and places.

Note: You must include allegations of wrongful conduct as to EACH and EVERY defendant in your complaint. (you may use additional sheets if necessary).

1) On November, 15th 2014 @ Approximately 6:05 pm to 8:30 pm
 @ Upstate C.F. Inside the Infirmary (O.M.H. Room)
 Correction Officers Law. Laberge, S. Lainez, K. Ellsworth,
 and E. Smith with several other officers all acting under
 the Color of Law, Subjected me to assault and battery,
 as well as Rape, without provocation (and Retaliation
 from my grievances/complaints etc... with Correction
 Officer Law. Laberge, and Nurses M. Travers and E. White,
 when I was incarcerated @ Upstate C.F. previously.)
 Causing me, severe physical and mental pain and
 injuries. While Lieutenant J.G. Tatro, and Sergeants
 M.C. Tophkins, and C.S. Rowe stood there and watched after
 Sergeant M.C. Tophkins and LT. Tatro bring me down there
 to the Infirmary.

(SEE ATTACHED SHEET)

Continuation of Page #4 Facts.

2.) On Nov. 16th 2014 Still in the Infirmary (Court Rooms)
Correction Officers S.D. Lamara and E. Smith
Continued to Physically Assaulted me. I^{VE} Spoke
to Sergeant C.S. Rowe and Nurse(s) B.L. Brie
and B.L. Holcombe about Nov. 15th and this physical
Assault and Rape

3.) Nov. 17th 2014 when Returned back to my cell
I^{VE} Spoke to and stop Everybody Everyday All the
way to Feb. / March 30th 2015 and wrote Grievances/
Complaints about getting Rape and Physically assault-
ed and having a bone sticking Out my Left Foot
with burns and scars On my body, to Captain
T. ZERNIAK, Lieutenant(s), K.W. Roger, And J.G. Tatro. The
Nurse(s) E. White, L. Marlow, D. PRIME, C. Fairchild and the
Nurse Administrator N. Smith The Physician assistant ~~to~~
M.K. Kowalch, Sergeant J.J. Denah, the grievance super-
-visors Brad L. Collyer and Scott W. Woodward.
as well as the mental health Social worker
J. Uhlerich. Nurse 2 G.M. Wilson. as well.

7.

CAUSES OF ACTION

Note: You must clearly state each cause of action you assert in this lawsuit.

FIRST CAUSE OF ACTION

Excessive Force and Sexual abuse in violation of plaintiff, Eighth Amendment right to be free from cruel and unusual punishment and sexual abuse, as well as inadequate medical care.

SECOND CAUSE OF ACTION

Retaliation in violation of plaintiff's First Amendment right to seek redress without retaliation for doing so.

THIRD CAUSE OF ACTION

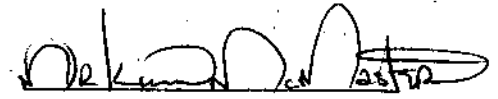
8. PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF(S) REQUEST(S) THAT THIS Court grant the following relief:

compensatory damages in the amount of
#980,000,000 dollars, against each Defendant,
jointly and severally. Punitive damages in the amount
of #930,000,000 dollars, against each Defendant, jointly
and severally; and any other Relief deemed Just Improper.

I declare under penalty of perjury that the foregoing is true and correct

DATED: 4/28/2015

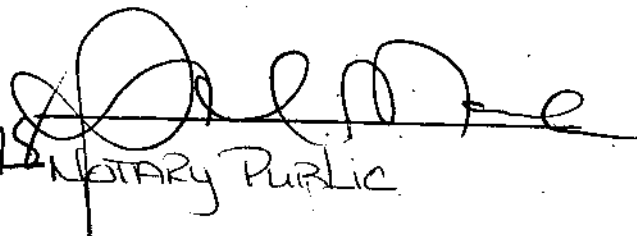


(Pin: 08-B-1832)

Signature of Plaintiff(s)
(all Plaintiffs must sign)

Sworn to before me this 29
Day of April, 2015

Donna J. Malville
Notary Public State of New York
New York State No. 01MA8221161
County of Franklin
My Commission Expires on: 05/24/2018


NOTARY PUBLIC

Affidavit

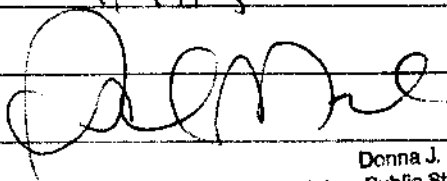
This is Mr. T. Dixon #04A4766 AT the
Upstate C.F. and on the 6th day of April
2015, I over heard C.O. L. Laberge talking
to C.O. K. ST. Mary stating: This nigger McMaster
(who's my Neighbor) keep writting me up and I told
Laberge we should've killed his Ass, I'll get him
again

Then on the 7th day of April he L. Laberge
told K. ST. Mary after Not Feeding McMaster His
Food for the second (2nd) day straight at lunch
Something about "F--- I.G. he's untouchable since
a November 15th incident with McMaster. I'm
writing this on my own will for McMaster.

Everything stated above is the truth of what
I had heard in front of my cell.


cc Files: Dixon

4/9/15



Donna J. Mainville
Notary Public State of New York
New York State No. 01MA6221161
County of Franklin
My Commission Expires on: 05/24/20

Respectfully

Mr. T. Dixon - 
#04A4766